

**APPLICATION FOR NOMINATION TO
JUDICIAL OFFICE**

**SECTION I: PUBLIC INFORMATION
(QUESTIONS 1 THROUGH 65)**

PERSONAL INFORMATION

1. Full Name: **Douglas Steven Williams**
2. Have you ever used or been known by any other name? **Yes**

If so, state name: **Steve Williams and D. Steven Williams**

3. Office Address:

Apache County Superior Court

Location: 70 West 3rd South, St. Johns

Mailing: P.O. Box. 667, St. Johns, Arizona 85936

Navajo County Board of Supervisors

Location: 100 East Code Talkers Drive, Holbrook

Mailing: P.O. Box 668, Holbrook, Arizona 86025

Eagar Magistrate Court

Location: 22 West 2nd Street, Eagar

Mailing: P.O. Box 1311, Eagar, Arizona 85925

4. How long have you lived in Arizona? **21 years (since 1998)**

What is your home zip code? **85901**

5. Identify the county you reside in and the years of your residency.

Navajo County for 12 years (since 2007)

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6. If nominated, will you be 30 years old before taking office? **Yes**

If nominated, will you be younger than age 65 at the time the nomination is sent to the Governor? **Yes**

7. List your present and any former political party registrations and approximate dates of each: **Republican (since 1994)**

(The Arizona Constitution, Article VI, § 37, requires that not all nominees sent to the Governor be of the same political affiliation.)

8. Gender: **Male**

Race/Ethnicity: **Caucasian**

EDUCATIONAL BACKGROUND

9. List names and locations of all post-secondary schools attended and any degrees received.

Arizona State University College of Law (2001-2004)
Tempe, Arizona
Degree: Juris Doctorate

Arizona State University (1998-2001)
Tempe, Arizona
Degree: Bachelor of Science, Justice Studies

Brigham Young University (1998)
Provo, Utah
Degree: None

United States Naval Academy Preparatory School (1994-1995)
Newport, Rhode Island
Degree: None

10. List major and minor fields of study and extracurricular activities.

Arizona State University College of Law

- **Extern for the Arizona Legislature House Rules Committee, Spring**

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Semester 2004.

- Extern for the Honorable Susan R. Bolton, U.S. District Court of Arizona, Fall Semester 2003.
- Extern for the Honorable Anna Baca, Maricopa County Superior Court, Summer 2003.
- Volunteer Scoutmaster/Assistant Scoutmaster, Boy Scouts of America
- Birth of our first two children, a son and a daughter.

Arizona State University

- Major, Justice Studies
- Minor, Communications
- Member of the Men's Wrestling Team
- Kyrene Middle School Wrestling Coach
- Volunteer Assistant Scoutmaster, Boy Scouts of America

Brigham Young University

- Trained with the Men's Wrestling Team for the one semester I attended BYU

Served a two-year volunteer church mission in the South Carolina Columbia Mission for The Church of Jesus Christ of Latter-Day Saints.

Naval Academy Preparatory School

- Member of the Men's Wrestling Team.

11. List scholarships, awards, honors, citations and any other factors (e.g., employment) you consider relevant to your performance during college and law school.

Arizona State University College of Law

- Employed 20-30 hours/week throughout entirety of law school with three of Arizona's four public pension plans (Public Safety Personnel Retirement System, Elected Officials' Retirement Plan, Corrections Officer Retirement Plan).

Arizona State University

- *Cum Laude*
- Dean's List
- Maroon & Gold Scholar Athlete
- Golden Key National Honor Society
- Part-time employment with campus security.
- Part-time employment with the law firm of Jardine, Baker, Hickman and Houston.

Naval Academy Preparatory School

- **Earned the National Defense Service Medal**
- **Selected by teammates as the Wrestling Team Captain**
- **Selected by teammates as the Outstanding Wrestler**

PROFESSIONAL BACKGROUND AND EXPERIENCE

12. List all courts in which you have been admitted to the practice of law with dates of admission. Give the same information for any administrative bodies that require special admission to practice.

Arizona Supreme Court – 5/18/2005
U.S. District Court, District of Arizona – 10/16/2006

13. a. Have you ever been denied admission to the bar of any state due to failure to pass the character and fitness screening? **No**
- b. Have you ever had to retake a bar examination in order to be admitted to the bar of any state? **Yes**

If so, explain any circumstances that may have hindered your performance.

I sat for the Arizona Bar Examination twice. The first sitting was in July 2004 following law school graduation. Throughout the entirety of law school, as well as while studying for the bar exam, I worked 20-30 hours/week. A couple of days prior to the examination a close friend, and his father, passed away unexpectedly. I went into the examination grieving his loss. I missed achieving a passing score by two raw points. I appealed two of my essay scores and increased my score by one raw point, ultimately leaving me one raw point short of passing. The second sitting was in February 2005. My score increased significantly.

14. Describe your employment history since completing your undergraduate degree. List your current position first. If you have not been employed continuously since completing your undergraduate degree, describe what you did during any periods of unemployment or other professional inactivity in excess of three months. Do not attach a resume.

EMPLOYER

DATES

LOCATION

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Apache County Superior Court Judge <i>Pro Tempore</i> (part-time 2-3 days/week)	2016 – Present	St. Johns, AZ
Eagar Magistrate Court (part-time) Presiding Judge	2018 – Present	Eagar, AZ
Navajo County Board of Supervisors	2015 – Present	Holbrook, AZ
Williams Law Group, PLLC	2012 – 2016	Show Low, AZ
Riggs, Ellsworth & Porter, LLC (previously Law Office of Matthew L. Riggs)	2007 – 2012	Show Low, AZ
Law Office of D. Steven Williams	2006 – 2007	Mesa, AZ
Maricopa County Attorney's Office	2005 – 2006	Mesa, AZ
Elected Official's Retirement Plan Corrections Officer Retirement Plan Public Safety Personnel Retirement System	2001 – 2005	Phoenix, AZ

15. List your law partners and associates, if any, within the last five years. You may attach a firm letterhead or other printed list. Applicants who are judges or commissioners should additionally attach a list of judges or commissioners currently on the bench in the court in which they serve.

**Apache County Superior Court
Honorable Michael Latham, Presiding
Honorable Alan Perkins, Pro Tempore**

**Williams Law Group – Associates
Elizabeth Hale (contract work)
Jon Saline (contract work)**

16. Describe the nature of your law practice over the last five years, listing the major areas of law in which you practiced and the percentage each constituted of your total practice. If you have been a judge or commissioner for the last five years, describe the nature of your law practice before your appointment to the bench.

In the five years prior to being appointed to serve as a Superior Court Judge, *Pro Tempore*, my law practice consisted of the following areas of law:

Criminal Defense (felony and misdemeanor)	75%
Juvenile Dependency/Delinquency	15%

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Other

10%

17. List other areas of law in which you have practiced.

Domestic relations, personal injury, criminal prosecution, protective orders, restoration of civil rights.

18. Identify all areas of specialization for which you have been granted certification by the State Bar of Arizona or a bar organization in any other state.

None.

19. Describe your experience as it relates to negotiating and drafting important legal documents, statutes and/or rules.

I regularly draft orders in my position as a Superior Court Judge, *Pro Tempore*.

While serving as an extern with the Arizona Legislature House Rules Committee, my primary responsibility was to review proposed legislation to determine the constitutionality of the same. In that capacity, I was involved in the process of drafting and amending statutes.

While working for three of Arizona's four public pension plans, one of my responsibilities was to assist in tracking proposed legislation affecting the pension plans. In that capacity I had limited involvement in the process of drafting and amending statutes.

20. Have you practiced in adversary proceedings before administrative boards or commissions? **No.** If so, state:

a. The agencies and the approximate number of adversary proceedings in which you appeared before each agency. **Not applicable.**

b. The approximate number of these matters in which you appeared as:

Sole Counsel: **Not applicable.**

Chief Counsel: **Not applicable.**

Associate Counsel: **Not applicable.**

21. Have you handled any matters that have been arbitrated or mediated? **Yes.**

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If so, state the approximate number of these matters in which you were involved as:

While practicing law, I was appointed on two separate occasions by the superior court to act as an arbitrator in civil disputes. In addition, although not considered formal arbitration/mediation, I have also participated in many settlement conferences in criminal matters as a prosecutor, defense attorney, and as a judge.

Sole Counsel: **Not applicable.**

Chief Counsel: **Not applicable.**

Associate Counsel: **Not applicable.**

22. List at least three but no more than five contested matters you negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (3) a summary of the substance of each case; and (4) a statement of any particular significance of the case.

State of Arizona v. K.S. / S0100CR201000059

1. **Date of proceedings: 4/13/2010 – 8/9/2010**
Apache County Superior Court

2. **Attorneys involved:**

I represented the Defendant.

**Attorney for the State - Beverly Rudnick
Arizona Attorney General's Office (previously)
Maricopa County Public Defender's Office (currently)
beverly.rudnick@maricopa.gov
(602) 506-7711**

3. **The defendant was accused of defrauding insurance companies over an extended period of time in an estimated amount of \$300,000 while employed at a dental office. The defendant was a mother and grandmother. This occurred in a small community and drew local attention. The state charged the defendant with eight separate felony counts ranging from class 2 to class 6 felonies. I was able to negotiate a plea agreement where the defendant served one year of incarceration followed by a seven-year probation tail.**

4. The case was significant for two reasons: (1) given the length of time the fraudulent activity occurred over, as well as the amount of money defrauded in a small community, the settlement reached was lenient for my client, and (2) it was a reminder to me that otherwise good people can get off track if they are not careful and cautious.

In the Matter of C.R. (a minor) / S0100JD2008007

1. Date of proceedings: 11/13/2008
Apache County Juvenile Court

2. Attorneys involved:

Along with Mike Ellsworth, a partner with Riggs, Ellsworth & Porter who I worked for at the time, I represented the Mother of the juvenile.

Attorney for Child Protective Services
Gary Sheets (retired)
Arizona Attorney General's Office
garysheetslaw@hotmail.com

3. This was a dependency matter with a related juvenile delinquency case that made national headlines. Our firm was appointed to represent the mother on the dependency matter following charges filed against her eight-year-old son for the murder of the boy's father and father's friend.

Although the juvenile delinquency charges were pursued over an extended period of time, we were able to convince Child Protective Services (CPS) to dismiss the dependency matter without our filing a motion for the same with the Court. We persuaded the Attorney General's Office, which represented CPS, that the mother was able to care for the child and that the dependency action was prematurely filed with no legal basis.

4. This negotiation for the dismissal of the case was significant given the tremendous attention the juvenile delinquency matter drew from both state and national news outlets and the pressure (then) CPS felt to pursue the dependency action.

State of Arizona v. T.M. / S0900CR20070722

1. Date of proceedings: 7/12/2007 – 1/24/2008
Navajo County Superior Court

2. Attorneys involved:

I represented the Defendant.

Attorney for the State – Jonathan Apirion (retired)
Navajo County Attorney’s Office
(928) 524-4026
No email contact information – azbar.org

3. This was a case that drew local media attention. The defendant, a female high school teacher, was charged with multiple counts of sexual conduct with a minor. The morning of the first scheduled day of trial, and just before jury selection began, the judge precluded an audio recording that the state had failed to disclose despite our repeated requests for the same. With jury selection about to begin, a misdemeanor plea agreement was negotiated to resolve the case.
 4. This negotiation for a misdemeanor resolution was significant for a few reasons: (1) the settlement was reached just prior to beginning jury selection, (2) the witnesses were all present and ready to testify, (3) the case reinforced the duty of timely disclosure, and (4) the settlement reached was far more beneficial to my client than any plea offer previously extended.
23. Have you represented clients in litigation in Federal or state trial courts? **Yes.**
If so, state:

The approximate number of cases in which you appeared before:

Federal Courts: 1
State Courts of Record: 800 (estimate)
Municipal/Justice Courts: 400 (estimate)

The approximate percentage of those cases which have been:

Civil: 15%
Criminal: 85%

The approximate number of those cases in which you were:

Sole Counsel: 1,193
Chief Counsel: 2
Associate Counsel: 5

The approximate percentage of those cases in which:

You wrote and filed a pre-trial, trial, or post-trial motion that wholly or partially disposed of the case (for example, a motion to dismiss, a motion for summary judgment, a motion for judgment as a matter of law, or a motion for new trial) or wrote a response to such a motion: **10%**

You argued a motion described above **10%**

You made a contested court appearance (other than as set forth in the above response) **40%**

You negotiated a settlement: **97%**

The court rendered judgment after trial: **2%**

A jury rendered a verdict: **1%**

The number of cases you have taken to trial:

Limited jurisdiction court **20 (approximate)**

Superior court **20 (approximate)**

Federal district court **0**

Jury **11**

Note: If you approximate the number of cases taken to trial, explain why an exact count is not possible.

I have conducted 11 jury trials (3 as prosecutor and 8 as a criminal defense attorney). I have not kept a list of all cases that were resolved through a bench trial. The "approximate" numbers are my best recollection of both jury and bench trials conducted in the areas of domestic relations, juvenile dependency, juvenile delinquency, prosecution and criminal defense.

24. Have you practiced in the Federal or state appellate courts? **Yes.** If so, state:

The approximate number of your appeals which have been:

Civil: **Not applicable.**

Criminal: **Not applicable.**

Other: **1**

The approximate number of matters in which you appeared:

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As counsel of record on the brief: **1**

Personally in oral argument: **Not applicable.**

25. Have you served as a judicial law clerk or staff attorney to a court? **No.** If so, identify the court, judge, and the dates of service and describe your role.

Although I have not served as a judicial law clerk, I did have the opportunity to extern for both the Honorable Anna Baca, Maricopa County Superior Court, as well as the Honorable Susan R. Bolton, U.S. District Court of Arizona.

26. List at least three but no more than five cases you litigated or participated in as an attorney before mediators, arbitrators, administrative agencies, trial courts or appellate courts that were not negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency and the name of the judge or officer before whom the case was heard; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.

State of Arizona v. L.L. / CR-201200456

1. **Date of proceedings: 6/12/2012 – 1/18/2014**
2. **Court/Judge: Navajo County Superior Court
Judge John Lamb**
3. **Attorneys involved:**

I represented the Defendant, L.L.

**Attorney for Co-Defendant, D.B.
Dirk Legate
(928) 358-8557
legateandpenrodlaw@gmail.com**

**Attorney for the State
Patrick Zinicola
Navajo County Attorney's Office
(928) 524-4026
patrick.zinicola@navajocountyaz.gov**

4. **The co-defendants, along with Victim #1, had been drinking at a local bar with a group of people. Some in the group left the bar in the**

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early morning hours and went to an isolated area to continue the party. At some point, Victim #1 phoned her boyfriend, Victim #2, for a ride. Upon arriving, Victim #2 was assaulted, sustaining multiple fractures that required hospitalization for an extended period of time. Victim #1 also sustained minor injuries. Victim #1, who knew the co-defendants personally, identified both as the assailants.

At trial my client appeared in person, but the co-defendant failed to appear and the trial proceeded *in absentia*. The defense was based upon mistaken identification. My client's wife testified that he came home after leaving the bar. A search of his home, vehicle and person showed no signs of a physical confrontation. The jury rendered an acquittal on all counts.

5. This case was significant because both defendants were acquitted despite Victim #1, who personally knew the co-defendants, identifying them as the assailants. In addition, I was so impressed with the professionalism and courtesy of the prosecutor, both during and after the trial, that it inspired me to always want to conduct myself the way that he did. Finally, I came in contact with one of the jurors at the post office a couple of weeks after the trial who wanted to talk about my handling of the case. He was complimentary of the opening statement and the theme that was carried throughout the trial and during cross-examinations. Our conversation reinforced to me the importance of effective use of case themes and persuasion in lawyering.

State of Arizona v. H.K. / S0100CR201200034

1. Date of proceedings: 2/16/2012 – 6/28/2012
2. Court/Judge: Apache County Superior Court
Judge Michael Roca
3. Attorneys involved:

I represented the Defendant.

Attorney for the State
Josh Osborn
Apache County Attorney's Office
(928) 337-2427
No contact information – azbar.org

4. The defendant was charged with sexual assault, a class 2 felony, and sexual abuse, a class 5 felony. Police happened upon a scene just off of the Navajo Nation in Apache County behind a local gas station

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where police witnessed the defendant with an unconscious victim.

On cross-examination it was shown that the victim had given three different accounts of what occurred with each account (one to the police, one under oath at the contested preliminary hearing, and one at trial) all increasing in detail despite the victim's level of alcohol consumption at the time, as well as several months passing between each version. Although the police officer confirmed that the victim was unconscious, he also confirmed it took very little effort to wake him. The victim's credibility and the fact that the victim woke very easily when the police officer approached resulted in the jury concluding that the act was consensual.

5. This case was significant because until jury selection began, I did not believe the defendant had a very good chance for an acquittal. I learned a great deal about the importance of an attorney's ability to explain the evidence to a jury in a case with facts that were unpleasant for most to hear. Following the trial, two jurors expressed appreciation for sensitivity in use of language, as well as for what they felt was a particularly effective closing argument.

State of Arizona v. P.-- / CR2006xxxxxx

1. Date of proceedings: 2006 – 2007
2. Court/Judge: Gilbert Municipal Court
3. Attorneys involved:

I represented the Defendant.

Attorney for the State
Tom Taylor
Town of Gilbert Prosecutor's Office
(480) 635-7924

4. The defendant was a woman in her 60's accused of shoplifting \$16 worth of makeup. The defendant had no criminal history, was beginning to suffer memory loss, as testified to by her husband, and worked as an instructor for those seeking to become certified nurses. When negotiations for a non-misdemeanor resolution were unsuccessful, the matter proceeded to a jury trial. The result was a hung jury.
5. Following the verdict, each of the six jurors expressed frustration to either the prosecutor or myself that, from their view, their experience serving on this jury constituted a waste of resources given the small amount of goods/money involved. I had reinforced to me the

importance of public confidence in the judicial process and the vital role attorneys and judges play in building and maintaining that confidence.

27. If you now serve or have previously served as a mediator, arbitrator, part-time or full-time judicial officer, or quasi-judicial officer (e.g., administrative law judge, hearing officer, member of state agency tribunal, member of State Bar professionalism tribunal, member of military tribunal, etc.), give dates and details, including the courts or agencies involved, whether elected or appointed, periods of service and a thorough description of your assignments at each court or agency. Include information about the number and kinds of cases or duties you handled at each court or agency (e.g., jury or court trials, settlement conferences, contested hearings, administrative duties, etc.).

Apache County Superior Court Judge, *Pro Tempore* (2016 – Present)

- I was appointed in 2016 to serve as a part-time, Judge *Pro Tempore* in a county with only two other Superior Court Judges (the elected Presiding Judge and a full-time, appointed Judge *Pro Tempore*). I have consistently served 2-3 days/week in this position over the past 3 years.
- Absent a conflict, I am the primary judge assigned to preside over all civil, family law, probate, guardianship/conservatorship, mental health matters and appeals from limited jurisdiction courts. I preside over criminal matters where a conflict exists for the other two judges.
- From 2017 to 2018 I presided over the Drug Court.
- I regularly conduct bench trials in domestic relations matters, and occasionally in civil, guardianship/conservatorship and mental health matters.
- Over the past 3 years I have presided over the following type/number of cases:
 - Civil 561
 - Domestic Relations 245
 - Probate 224
 - Guardianship/Conservatorship 63
 - Mental Health 10
 - Other 107(including but not limited to appeals from limited jurisdiction courts, juvenile adoption, termination of parental rights, protective orders, felony criminal, juvenile delinquency, etc.).

Eagar Magistrate Court, Presiding Judge (2018 – Present)

- I was appointed in 2018 to serve part-time as the only Magistrate for the Eagar Municipal Court (“EMC”). The EMC has a single court

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clerk. Formal court hearings are typically held 1-2 days/month. The primary matters coming before the court include criminal misdemeanor, criminal traffic, civil traffic and municipal code violations.

- Over the past year I have presided over the following type/number of cases:
 - Criminal/Criminal Traffic 57
 - Civil Traffic 43
 - Municipal Code Violations 9

28. List at least three but no more than five cases you presided over or heard as a judicial or quasi-judicial officer, mediator or arbitrator. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.

Escudilla Management Corporation v. Owens, et al.

1. Date of proceedings: 5/26/2015 – 3/12/2018
2. Court: Apache County Superior Court
3. Attorneys involved:

Attorney for Plaintiff, Escudilla Management Corp.
Denton Peterson, PC
Brad Denton, Esq.
(480) 325-9900
brad@dentonpeterson.com

Attorney for Defendant, Owens
Owens Law, PLC
Brad Owens, Esq.
(602) 265-4800
brad@owenspyper.com

Attorney for Defendant, Jarvis
Jardine, Baker, Hickman & Houston, PLLC
Brad Jardine, Esq.
(602) 200-9777
bjardine@jbhhlaw.com

4. Plaintiff, a general partnership, initiated a partition action of the partnership's assets, including over 2,000 acres of real estate, cash and accounts receivable. There were more than 20 partners with

varying interests in the general partnership. I entered judgment for partition and appointed three real-estate commissioners to determine if there was a fair and equitable way to distribute the partnership's assets. A few of the limited partners, whose interest amounted to 10% of the total partnership, objected to the recommendation of the commissioners and a trial was held. I found the commissioners' report and recommendation to be fair and equitable and ordered the partition.

5. Given the number of limited partners, the amount of acreage and the assets involved, the partition action was very complicated. The judgment was affirmed on appeal.

R.V.B. v. J.P., et al.

1. Date of proceedings: 12/18/2018 – 6/5/2019
2. Court: Apache County Superior Court
3. Attorneys involved:

Both the Plaintiff and Defendant were *in propria persona* litigants.

4. Plaintiff filed for a Temporary Restraining Order seeking to prevent foreclosure of her home, as well as a complaint with multiple claims. I initially granted the Temporary Restraining Order. After multiple hearings, and a Motion to Dismiss filed by the only Defendant to be served, I ultimately dismissed the underlying complaint for "failure to state a claim upon which relief (could) be granted," which also resulted in the dismissal of the Temporary Restraining Order.
5. This case was significant, in part, because the *pro per* litigants understandably had some difficulty with the procedural rules, as well as recognizing the legal elements in asserting or defending claims made. It gave me an opportunity to issue multiple rulings and research new legal issues. The experience also reiterated the importance of showing respect and courtesy to all parties involved.

In Re the Marriage of J.S. and A.S.

1. Date of proceedings: 2/21/2018 – 1/7/2019
2. Court: Apache County Superior Court
3. Attorneys involved:

Attorney for Petitioner J.S. (for portion of case)

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Coronado Law Firm, PLLC
Eduardo Coronado
(928) 532-4529

Attorney for Petitioner J.S. (for portion of case)
Taylor Law Office, PLC
Shawn Taylor
(928) 536-3399
shawn.taylor.law@gmail.com

Attorney for Respondent A.S.
Riggs, Ellsworth & Porter
Mike Ellsworth
(928) 537-3228
michael@riggsellsworth.com

4. This was an emotionally charged case arising from a protective order filed simultaneously with a petition for dissolution of marriage. Multiple motions for contempt were filed, and ultimately criminal charges arose for one of the parties. Several legal issues were raised and researched over the course of the case.
5. This case was significant because it reinforced to me the need for a calm judicial temperament. It also afforded the opportunity to conduct legal research on new issues.

29. Describe any additional professional experience you would like to bring to the Commission's attention.

While serving in both of my current judicial positions, I have also simultaneously served on the Navajo County Board of Supervisors for the last four years, serving as Chairman in 2018. In that capacity I have gained an appreciation for the distinct roles and responsibilities that each branch of government has, as well as the need for each branch to respect the roles and responsibilities of the other branches. It has given me the opportunity to associate with other elected officials in the legislative and executive branches at the local, state and federal level, as well as those serving in the judicial branch throughout our state. I recognize that this opportunity is unique and has afforded me with a well-rounded experience in government and public service.

My work as both a prosecutor and a criminal defense attorney has reinforced the value of our adversarial judicial system, and the need for judges to recognize and appreciate differing viewpoints.

My appointment by Governor Ducey to the Arizona Criminal Justice Commission has only helped to broaden my perspective on the far-

reaching impact of the justice system in Arizona.

My service as a missionary and as clergy in The Church of Jesus Christ of Latter-Day Saints has also been tremendously rewarding. I have had the opportunity to work alongside with and serve so many in all walks of life. Working alongside those who share my faith, those of different faiths, and those of no faith, has reinforced to me the value that each individual has, regardless of their circumstance in life.

I have worked alongside leaders of other religions, businesses, education and government organizations in helping to create the Annual Show Low Community Fast (Fast). Through the Fast nearly \$100,000 has been raised over the past six years (and it is growing each year) to assist those in need in the Show Low community.

I have enjoyed volunteering in the past as a leader in the Boy Scouts of America, an organization that allowed me the opportunity to earn the rank of Eagle Scout as a youth and all of the benefits that come through that process. I've enjoyed serving as a volunteer youth wrestling coach, and most recently as a volunteer youth soccer coach.

Of all of my experiences and life lessons, perhaps none are more gratifying to me than those shared with my wife of twenty years, Ann, and our four children. Our children are active participants in their schools, serving in student council, participating in sports, drama, music and serving others in our neighborhood and community. They are becoming the type of people who will contribute to their communities and country.

BUSINESS AND FINANCIAL INFORMATION

30. Have you ever been engaged in any occupation, business or profession other than the practice of law or holding judicial or other public office, other than as described at question 14? **No.**
31. Are you now an officer, director, majority stockholder, managing member, or otherwise engaged in the management of any business enterprise? **No.**

If so, give details, including the name of the enterprise, the nature of the business, the title or other description of your position, the nature of your duties and the term of your service. **Not applicable.**

Do you intend to resign such positions and withdraw from any participation in the management of any such enterprises if you are nominated and appointed? **Not applicable.**

- 32. Have you filed your state and federal income tax returns for all years you were legally required to file them? **Yes.**
- 33. Have you paid all state, federal and local taxes when due? **Yes.**
- 34. Are there currently any judgments or tax liens outstanding against you? **No.**
- 35. Have you ever violated a court order addressing your personal conduct, such as orders of protection, or for payment of child or spousal support? **No.**
- 36. Have you ever been a party to a lawsuit, including an administrative agency matter but excluding divorce? **No.**
- 37. Have you ever filed for bankruptcy protection on your own behalf or for an organization in which you held a majority ownership interest? **No.**
- 38. Do you have any financial interests including investments, which might conflict with the performance of your judicial duties? **No.**

CONDUCT AND ETHICS

- 39. Have you ever been terminated, asked to resign, expelled, or suspended from employment or any post-secondary school or course of learning due to allegations of dishonesty, plagiarism, cheating, or any other "cause" that might reflect in any way on your integrity? **No.**
- 40. Have you ever been arrested for, charged with, and/or convicted of any felony, misdemeanor, or Uniform Code of Military Justice violation? **No.**

If so, identify the nature of the offense, the court, the presiding judicial officer, and the ultimate disposition.

41. If you performed military service, please indicate the date and type of discharge. If other than honorable discharge, explain.

Honorable Discharge – U.S. Naval Reserves – 5/19/1995

42. List and describe any matter (including mediation, arbitration, negotiated settlement and/or malpractice claim you referred to your insurance carrier) in which you were accused of wrongdoing concerning your law practice.

Not applicable.

43. List and describe any litigation initiated against you based on allegations of misconduct other than any listed in your answer to question 42.

Not applicable.

44. List and describe any sanctions imposed upon you by any court.

Not applicable.

45. Have you received a notice of formal charges, cautionary letter, private admonition, referral to a diversionary program, or any other conditional sanction from the Commission on Judicial Conduct, the State Bar, or any other disciplinary body in any jurisdiction? **Yes.**

If so, in each case, state in detail the circumstances and the outcome.

In approximately 2006 I handled a personal injury matter for a family member. The case settled and a settlement check was deposited into my law firm's IOLTA account. I wrote a check from my firm's account to the client/family member for their settlement proceeds. One week later, after the client/family member deposited the check into their account, the underwriting division of the bank where my firm did business rejected the settlement check because the check was not endorsed by my client/family member. The IOLTA account became overdrawn which initiated an automatic bar complaint. I agreed to complete a diversionary training program through the state bar in lieu of contesting the complaint. The client/family member was made whole and suffered no financial harm. No other sanctions or suspensions resulted.

46. During the last 10 years, have you unlawfully used controlled substances, narcotic drugs or dangerous drugs as defined by federal or state law? **No.**

47. Within the last five years, have you ever been formally reprimanded, demoted, disciplined, cautioned, placed on probation, suspended, terminated or asked to resign by an employer, regulatory or investigative agency? **No.**
48. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? **No.**
49. Have you ever been a party to litigation alleging that you failed to comply with the substantive requirements of any business or contractual arrangement, including but not limited to bankruptcy proceedings? **Yes.** If so, explain the circumstances of the litigation, including the background and resolution of the case, and provide the dates litigation was commenced and concluded, and the name(s) and contact information of the parties.

I was the named defendant in a civil matter in 2010 arising from a credit card dispute. I was never served a copy of the Summons or Complaint and only became aware of it when I received an order of dismissal in the mail. I believe the case was filed in error because we reached a settlement before the case was filed. The case was filed 7/7/2010 and dismissed by the Plaintiff on 7/29/2010. Plaintiff (American Express) was represented by Aron & Associates – 1615 E. Fort Lowell Road #101, Tucson, Arizona – (520) 293-8700.

PROFESSIONAL AND PUBLIC SERVICE
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50. Have you published or posted any legal or non-legal books or articles? **No.**
51. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge? **Yes.**
52. Have you taught any courses on law or lectured at bar associations, conferences, law school forums or continuing legal education seminars? **No.**
53. List memberships and activities in professional organizations, including offices held and dates.
- **State Bar of Arizona, Member 2005 – present**
 - **County Supervisors Association, Member 2015 – present**
 - **Arizona Criminal Justice Commission, Member 2017 – present**

Have you served on any committees of any bar association (local, state or national) or have you performed any other significant service to the bar? **No.**

List offices held in bar associations or on bar committees. Provide information about any activities in connection with pro bono legal services (defined as services to the indigent for no fee), legal related volunteer community activities or the like.

- **I have consistently performed *pro bono* legal services annually since being admitted to the State Bar (average of 50 – 75 hours annually).**
- **I have met with Boy Scouts and Cub Scouts on multiple occasions to discuss the judicial and legislative branches of government.**
- **I have appeared as a guest instructor in high school classes to discuss various roles of government branches.**

54. Describe the nature and dates of any relevant community or public service you have performed.

- **Annual Show Low Community Fast, Co-Founder & Chairman (2013 – present). This is a non-profit organization that many businesses and community members in the Show Low area participate in each year. 100% of all monies raised go to assist local individuals and families in need.**
- **The Church of Jesus Christ of Latter-Day Saints – Bishop (2009 – 2011).**
- **The Church of Jesus Christ of Latter-Day Saints – Stake President (2011 – present).**
- **Volunteer youth wrestling coach (occasion throughout 2007 – 2017).**
- **Volunteer youth soccer coach (AYSO) (2019 – present).**
- **Volunteer, Boy Scouts of America (2000 – 2003; 2007 – 2011)**

55. List any relevant professional or civic honors, prizes, awards or other forms of recognition you have received.

- **I have received recognitions, along with my colleagues on the Navajo County Board of Supervisors, from various organizations for our service and/or support.**

56. List any elected or appointed public offices you have held and/or for which you have been a candidate, and the dates.

- **Appointed to the Navajo County Board of Supervisors
2/10/2015 – 12/31/2016**
- **Elected to the Navajo County Board of Supervisors**

Filing Date: August 20, 2019
Applicant Name: _____

1/1/2017 – Present

- **Appointed to the Apache County Superior Court, Judge *Pro Tempore* 10/1/2016 – Present**
- **Appointed to the Eagar Magistrate Court, Presiding Judge 7/1/2018 – Present**
- **Appointed to the Arizona Criminal Justice Commission, Member 11/2017 – Present**

Have you ever been removed or resigned from office before your term expired? **No.** If so, explain.

Have you voted in all general elections held during the last 10 years? **Yes.** If not, explain.

57. Describe any interests outside the practice of law that you would like to bring to the Commission's attention.

Outside of my profession, my favorite thing to do is to spend time with my wife. We look forward to attending our children's various activities, as well as teaching and supporting them. We enjoy laughing and being outdoors as a family and experiencing Arizona together. I take pleasure in maintaining a balanced life and in seeking physical, emotional and spiritual health. A few years-ago I completed the LOTOJA (Logan, Utah to Jackson Hole, Wyoming) bicycle race, which is a single day, 206-mile race.

HEALTH

58. Are you physically and mentally able to perform the essential duties of a judge with or without a reasonable accommodation in the court for which you are applying? **Yes**

ADDITIONAL INFORMATION

59. The Arizona Constitution requires the Commission to consider the diversity of the state's population in making its nominations. Provide any information about yourself (your heritage, background, life experiences, etc.) that may be relevant

Filing Date: August 20, 2019
Applicant Name: _____

to this consideration.

I have lived and worked in both Maricopa County, as well as rural Arizona, for more than two decades. Both locations and accompanying experiences have helped me to gain a broad perspective of the State, its people, values and diversity. I was educated and received both my undergraduate and law degree from one of Arizona's three public universities.

I've been able to serve my country in the military. I'm currently serving my community as a Judge *Pro Tempore*, Magistrate, County Supervisor, youth soccer coach, stake president (clergy), husband, father and neighbor.

Since moving to Arizona in 1995, my parents have lived in Gilbert, Marana and now Queen Creek. They raised four children while living in Michigan, Idaho, Utah, California and finally Arizona. Three of their children are still living. My parents are not college graduates. They have always worked hard to provide for our family's needs. Knowing that my parents, like most parents, were not in a position to help pay for college, each of my siblings worked hard to find ways to pay for college through academic and/or athletic scholarships and were able to compete in college athletics: Brother (U.S. Naval Academy – gymnastics), Sister (BYU – gymnastics and Sierra College – track), Brother (Yavapai College – basketball), Myself (ASU and Naval Academy Preparatory School – wrestling).

My in-laws (Chapman and Burnham families) have deep Arizona ties. My father-in-law provided for his family of eleven (two adults and nine children) on a Maricopa County Sheriff's Deputy salary.

Both my paternal grandfather, and paternal great-grandfather served in the Idaho State Senate and helped to instill in their posterity a love of country and duty to the same.

Previous family members left their native lands to come to the U.S. One set of paternal great-grandparents left New Zealand to pursue their faith and for opportunities offered here. One set of maternal great-grandparents left Germany in opposition to the Nazi regime. Other ancestors left Wales, Sweden, Ireland and England and helped to settle communities in the western U.S.

60. Provide any additional information relative to your qualifications you would like to bring to the Commission's attention.

None.

61. If selected for this position, do you intend to serve a full term and would you

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Applicant Name: _____

accept rotation to benches outside your areas of practice or interest and accept assignment to any court location? **Yes.** If not, explain.

62. Attach a brief statement explaining why you are seeking this position.

Attached as Exhibit A

63. Attach two professional writing samples, which you personally drafted (e.g., brief or motion). **Each writing sample should be no more than five pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing samples. Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public on the commission's website.

Attached as Exhibit B

64. If you have ever served as a judicial or quasi-judicial officer, mediator or arbitrator, attach sample copies of not more than three written orders, findings or opinions (whether reported or not) which you personally drafted. **Each writing sample should be no more than ten pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing sample(s). Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public on the commission's website.

Attached as Exhibit C

65. If you are currently serving as a judicial officer in any court and are subject to a system of judicial performance review, please attach the public data reports and commission vote reports from your last three performance reviews.

Not applicable.

**-- INSERT PAGE BREAK HERE TO START SECTION II
(CONFIDENTIAL INFORMATION) ON NEW PAGE --**

EXHIBIT A

#62

I have had the opportunity to serve as a Superior Court Judge, *Pro Tempore*, two to three days each week over the past three years. My experience as a trial judge has given me an opportunity to expand my legal knowledge and reinforced the importance of judicial demeanor and competence. I have enjoyed serving as a trial court judge and believe that experience can be helpful to service on the Court of Appeals.

I have also served as the Town of Eagar Magistrate over the past year. Having experience in a limited jurisdiction court, even while only serving one to two days each month, has helped me to recognize that most people's interactions with the court come through limited jurisdiction courts. A magistrate/justice of the peace has a tremendous impact on the strength of the public's confidence in the judiciary.

I believe I can contribute to the public's confidence in our judicial system through the manner I serve on the bench, as well as through opportunities to interact with other members of the judicial branch throughout Arizona.

While serving in both of my current judicial positions, I have also simultaneously served on the Navajo County Board of Supervisors for the last four years, serving as Chairman in 2018. In that capacity I've gained an appreciation for the distinct roles and responsibilities that each branch of government has, as well as the need for each branch to respect the distinct roles and responsibilities of the other branches. I recognize that this opportunity has been unique and has afforded me with a well-rounded experience in government and public service.

My professional and life experiences have taught me that the best judges listen attentively, are highly competent, are respectful, calm and steady in their decisions and interactions, and instill confidence in our judicial system. The best judges apply the law as it is written and intended, setting aside their own personal views on matters.

I believe my education, experiences and perspective could be of benefit to the Court of Appeals. It would be a tremendous privilege to serve the people of Arizona as an appellate judge. If selected, I will serve with the competence, integrity and commitment that the position demands and deserves.

EXHIBIT B

Professional Writing Sample #1
(Excerpt from Appellate Brief)

III. ARGUMENT

Issues As Presented by Appellant

In Appellant's Opening Brief, eleven (11) issues are presented for the court. In taking a close look at those issues identified by Appellant, nearly all issues can be addressed and resolved under the dispositive umbrella of whether or not Appellee's are subject to the Act as Employers at the time of the injury to Appellant on April 22, 2008.

As correctly identified by the ALJ, the ultimate issue is whether or not Appellee was an Employer subject to the Act on April 22, 2008. If the court concludes as both the Special Fund Division/No Insurance Section did in its denial of Appellant's claim on July 14, 2008, as well as the ALJ at the Hearing on November 17, 2008, as communicated through ALJ Findings dated December 19, 2008, then nearly all of Appellant's issues presented fail. Of the remaining issues, Appellant urges the court to find, contrary to longstanding and sound Arizona case law, that the current law runs contrary to public policy.

Standard of Review

The court reviews *de novo* both questions of statutory interpretation, *Stulcev. Salt River Project Agric. Improvement & Power Dist.*, 197 Ariz. 87, 89, ¶ 3, 3P.3d 1007, 1009 (App.1999), as well as conclusions of law, such as whether an employer is subject to the Act, *see Special Fund Div./No Ins.*

Section v. Indus. Comm'n, 172, Ariz. 319, 321, 836 P.2d 1029, 1031 (App.1992). With respect to issues pertaining to questions of fact, the court defers to findings that are reasonably supported by the record. *Kaibab Indus. C. Indus. Comm'n*, 196 Ariz. 601, 605, ¶ 10, 2 P.3d 691, 695 (App.2000).

Regularly Employed

As the ALJ correctly pointed out in its ALJ Findings, “the controlling statutory authority defining those employers subject to the Arizona Worker’s Compensation Act is A.R.S. § 23-902,” which provides in pertinent portion:

A. Employers subject to this chapter are ... every person who employs any workers or operatives regularly employed in the same business or establishment under contract of hire ..., except domestic servants.... For the purposes of this subsection, "regularly employed" includes all employments, whether continuous throughout the year, or for only a portion of the year, in the usual trade, business, profession or occupation of an employer.

B. When an employer procures work to be done for the employer by a contractor over whose work the employer retains supervision or control, and the work is a part or process in the trade or business of the employer, then the contractors and the contractor's employees, and any subcontractor and the subcontractor's employees, are, within the meaning of this section, employees of the original employer. For the purposes of this subsection, "part or process in the trade or business of the employer" means a particular work activity that in the context of an ongoing and integral business process is regular, ordinary or routine in the operation of the business or is routinely done through the business' own employees.

C. A person engaged in work for a business, and who while so engaged is independent of that business in the execution of the work and not subject to the rule or control of the business for which the work is done, but is engaged only in the performance of a definite job or piece of work, and is subordinate to that business only in effecting a result in accordance with that business design, is an independent contractor.

It is well settled that the phrase “regularly employed” in § 23-902(A) refers to “only those who, in the normal or usual course of their business, hire others.” *Putz v. Industrial Commission*, 203 Ariz. 146, 148, 51 P.3d 979, 981 (App.2002), *relying on Donahue v. Industrial Commission*, 178 Ariz. 173, 176-77, 871 P.2d 720, 723-24 (App.1993); see also *Marshall v Industrial Commission*, 62 Ariz. 230, 156 P.2d 729 (1945), *Agee v. Indus. Comm’n*, 10 Ariz.App. 1, 3-5, 455 P.2d 288, 290-291 (1969), *Modern Trailer Sales of Ariz., Inc. v. Indus. Comm’n*, 17 Ariz.App. 482, 485-86, 498 P.2d 556, 559-60 (1972).

In *Donahue*, the court further explained that, “section 23-902(A) renders an employer subject to the Act only when he employs at least one employee in the regular course of his business.” 178 Ariz. at 179, 871 P.2d at 726. The court continued, “If the employer ordinarily does not regularly employ any workers – if he hires only occasionally and unpredictably – he is not subject to the Act.” *Id.*

Further still, “section 23-902(A) renders an employer subject to the Act only when he employs at least one employee in the regular course of his business.” *Putz v. Industrial Comm’n*, 203 Ariz. at 149, 51 P.3d at 982.

In the present case, MDCE ceased its existence in 2005. Margaret Dahlgren went to work as a waitress, while Kert Dahlgren ceased regular employment. (ALJ Findings ¶ 6(B)(1)). Kert Dahlgren completed a handful of side jobs between 2006 and 2008. He did not hire any help over that period of time, other than Appellant on one side job in 2008. Not only is there a lack of evidence that would suggest Kert Dahlgren “regularly employed” workers over that time period, but the evidence is that he never “employ(ed) any workers” during that time period, excepting the Appellant on one “occasional and unpredictable” job.

Issue 1: THE ALJ GAVE ADEQUATE WEIGHT WITH REGARD TO THIRD PARTY LABOR.

Appellant attempts to cite to a nearly sixty (60) year-old non-controlling Alabama case in *Lingo v. Crews*, 253 Ala. 227, 43 S.2d 815 (1950), arguing that the court’s conclusion that an employer did not “regularly employ” workers hinged on the employers limited use of an employee in only eight (8) of the previous one hundred and four (104) days. In fact, in *Lingo* the worker employed at least eight (8) employees in the preceding one hundred and four (104) days. The court concluded that such employees were not regularly employed. In the instant case, Kert Dahlgren had never employed anyone, only MDCE had, and that

ceased three (3) years prior to the injury of Appellant. In fact, no other employee had ever been hired or paid in any fashion to assist Kert Dahlgren in any side jobs he had performed since the closure of MDCE. The Appellant was the first and only hired hand. Thus, Appellant's attempt to rely upon *Lingo* is counterproductive to his position. Certainly the *Lingo* court would have found that Kert Dahlgren had not "regularly employed" workers since it had been much longer than the one hundred and four (104) days at issue in that case.

Appellant cites to a second fifty (50) year-old non-controlling case in *Mathers v. Sellers*, 113 So.2d 443 (Fla.App.1959), out of Florida. Appellant contends that the crucial factor in that case was that an employee was used only once in three weeks for only a few hours. That analysis fails to relay the true nature of the non-binding case. In fact, there were a total of five (5) employees hired over a several week period to work on a boat. The court concluded that the employer did not fall under the Florida Worker's Compensation Act, and that the employee's were not covered under the Act. The court ultimately denied the employee's claim.

In addition, Appellant cites to *Putz v. Industrial Comm'n*, 203 Ariz. at 149, 51 P.3d at 982, pointing out that, "[r]etaining the 'regularly

Professional Writing Sample #2

1 inquiries was permissible under the Fourth Amendment so long as the officer had
2 articulable suspicions concerning possible criminal activity.” *State v. Richcreek*, 187
3 Ariz. 501, 504, 930 P.2d 1304, 1307 (1997) (emphasis added); *see also State v. Rogers*,
4 186 Ariz. 508, 924 P.2d 1027 (1996) (finding that the police lacked an articulable
5 suspicion justifying an investigatory stop where they saw a defendant and his companion
6 emerge from behind large bushes in residential area known for drug use, walk down the
7 middle of the road, and stare at the officers). However, “random vehicle stops for
8 inspection, when not based on reasonable suspicion of criminal activity, constitute an
9 impermissible seizure under the Fourth Amendment.” *Id.* at 508, 930 P.2d at 1308,
10 *relying on State v. Ochoa*, 112 Ariz. 582, 544 P.2d 1097 (1976).

12 The United States Supreme Court in *U.S. v. Cortez*, 449 U.S. 411, 101 S.Ct. 690,
13 66 L.Ed.2d (1981), held police officers must have a particularized and objective basis for
14 suspecting the person stopped of criminal activity. In *Cortez*, the Court relied upon a two
15 prong totality of the circumstances test: (1) the assessment must be based upon all the
16 circumstances; (2) the assessment must raise a suspicion that the particular individual
17 being stopped is engaged in wrong doing. *Id. See State v. O’Meara*, 2000 WL 1231361
18 (Ariz.) (a court should look at the whole picture in determining whether factors present,
19 collectively, show reasonable suspicion of criminal activity).

22 Finally, the Arizona Supreme Court recently unequivocally explained that “under
23 the current status of federal law and the sphere of protection granted individuals within
24 their vehicles,” the police may not stop individuals within their vehicle, “without at least
25

1 articlable suspicion of criminal activity....” *Richcreek*, 187 Ariz. at 505, 930 P.2d at
2 1308 (emphasis added).

3 In the matter before the court, Officer Fellows indicated a “passenger in the
4 vehicle kept looking back at me.” It appears for this reason Officer Fellows, along with
5 Det. Spear and Officer Walden, determined to conduct a stop of the vehicle Mr. Rhoton
6 was a passenger in. Although Officer Fellows followed the vehicle for a time, neither
7 Officer Fellows nor any other officer involved, reports observing any alleged traffic
8 violations or any other behavior that would give rise to an “articlable suspicion of
9 criminal activity.”
10

11 In order to justify the officers’ investigatory stop of Mr. Rhoton while in his
12 vehicle, the officers are required to have made some observation to indicate Mr. Rhoton
13 was somehow involved in criminal activity. *Richcreek*, 187 Ariz. at 505, 930 P.2d at
14 1308. However, none of the officers ever indicate such. It was only after stopping Mr.
15 Rhoton, questioning Mr. Rhoton and subsequently conducting a search of the vehicle Mr.
16 Rhoton was a passenger in that any evidence was obtained that could possibly indicate
17 Mr. Rhoton may or may not have been involved in criminal activity.
18

19 Unfortunately for the State, however, an investigatory stop cannot be justified by
20 information obtained after the stop, but rather must be based upon information giving rise
21 to an articlable suspicion of criminal activity prior to the stop. *United States v.*
22 *Morrison*, 546 F.2d 319 (9th Cir.1976) (emphasis added).
23
24
25

1 Therefore, because the officers lacked an "articulable suspicion of criminal
2 activity" prior to the traffic stop, the officers' stop of Mr. Rhoton was illegal and the
3 subsequent gathering of evidence was likewise illegal.

4 **CONCLUSION**

5 For the reasons stated above, the Defendant motions this court to suppress all
6 evidence obtained as a result of the illegal stop of the vehicle.

7
8 RESPECTFULLY SUBMITTED this 23rd day of May, 2007.

9 **Matthew L. Riggs, P.C.**

10
11 
12 _____

13 Steve Williams
14 Attorney for Defendant

15
16 ORIGINAL/COPY of the foregoing filed with
17 the Clerk of the Court and mailed/delivered
18 this 23rd day of May, 2007, to:

19 Honorable Judge Nielsen
20 Navajo County Superior Court
21 P.O. Box 668
22 Holbrook, Arizona 86025

23 Navajo County Attorney's Office
24 Mr. Jonathan Arpirion, Deputy County Attorney
25 P.O. Box 668
Holbrook, Arizona 86025

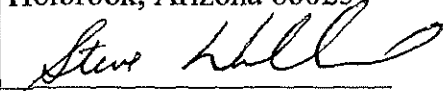


EXHIBIT C

Judicial Writing Sample #1

UNDER ADVISEMENT RULING/ORDER

A Bench Trial was conducted on November 29, 2018. During the proceedings, the Court heard from the witnesses, including the parties. The Court has considered the evidence, including the demeanor of the witnesses, reviewed the exhibits, considered the parties' arguments, and reviewed applicable rules, statutes and case law.

Background

Located in Apache County is a subdivision known as Cedar Ridge which is comprised of 1-acre (approximately) parcels of land.

In August 2017 Plaintiffs purchased one of the 1-acre parcels of land (hereinafter "Parcel 101") and immediately began to make improvements to the property by laying water pipe along the fence-line, as well as adding buildings and extending the driveway along other portions of the property. Plaintiffs did not have the property surveyed before their purchase, but instead relied on existing fences, which appear to have been in place for decades, in determining the boundaries of the property. Parcel 101 is adjacent to a second 1-acre parcel of land owned by Defendants (hereinafter "Parcel 100"). A third 1-acre parcel of land is directly adjacent to the opposite side of Parcel 100 (hereinafter "Parcel 99").

Approximately 4 years ago the owner of Parcel 99 had the property surveyed and determined that the existing fence-lines were not properly located along property lines. The fence at the front of Parcels 99/100 was correctly positioned but was 52 feet off by the time the fence line reached the back of the properties (52 feet onto Parcel 99). Defendants then obtained a survey of their own and found that the fence line between Parcels 100/101 was correctly placed at the front of the

properties but was off by 43 feet by the time the fence line reached the back of the properties (43 feet onto Parcel 100).

It is uncontested that the wedge-shaped portion of property that lies between the fence line of Parcels 100/101 and the actual property boundary as surveyed was undeveloped, unimproved and seemingly untouched by prior owners until Plaintiffs first began making improvements in August 2017.

A neighbor, who own Parcels 104-110 adjacent to the backside boundaries of Parcels 99, 100 and 101, informed Plaintiffs that the existing fence line may not be an accurate boundary when they observed Plaintiffs efforts to make improvements to Parcel 101 along the fence-line with Parcel 100. Plaintiffs immediately stopped all work on the wedge of land in question and now bring suit against Defendants, claiming adverse possession, for the wedge of land between the fence-line and the actual boundary between Parcels 100/101.

Analysis

The Plaintiffs in this case are required to show by “clear and convincing evidence” that they or their predecessors in title had maintained “adverse possession” of the wedge of land for the 10-year period provided in ARS 12-526. See Sabino Town & Country Estates Ass’n v. Carr, 186 Ariz. 146, 149 (App.1996) (adverse possession claims require clear and convincing evidence).

Adverse Possession “means actual and visible appropriation of the land, commenced and continued under a claim of right inconsistent with and hostile to the claim of another.” ARS 12-521. It is well settled that “in order for one to acquire title purely by adverse possession, such possession must be actual, open and notorious, hostile, under a claim of right, continuous for the statutory period, and exclusive.” Rorebeck v. Criste, 1 Ariz.App. 1, 3-4 (1965). There are no

equities favoring the establishment of such a claim. Combs v. DuBois, 135 Ariz. 465 (App. 1982). It is immaterial whether the adverse claimant or legal owner knew or did not know the true boundary, rather a claim of right is simply the intention of the party in possession to appropriate and use the land as his own to the exclusion of others. Trevillian v. Rais, 40 Ariz. 42 (1932).

When enclosure of land itself is relied upon as the evidence of possession, “it must be complete and so open and notorious as to charge the owner with knowledge thereof.” Knapp v. Wise, 122 Ariz. 327, 329 (App.1979). “The question in such cases is whether the enclosure, like other acts of possession, is sufficient to ‘fly the flag’ over the land and put the true owner on notice that his land is held under an adverse claim of ownership.” Id.

From the testimony and evidence presented, it appears that the wedge of land at issue was never used in any manner by an owner of Parcel 101 prior to Plaintiffs purchase of the property in 2017. For the first time, beginning in August 2017, did an owner of Parcel 101 actually possess and begin to use the wedge of land (in this case by laying a water pipe near the fence-line). Plaintiff immediately stopped laying the water pipe or using the wedge of land when learning from a neighbor that there may be a boundary dispute. In this instance, a misplaced fence, without any additional acts from any owners of Parcel 101 until August 2017 does not “fly the flag” over the wedge of land sufficient to put the Defendants “on notice” that the land was being “held under an adverse claim of ownership.”

Therefore,

IT IS ORDERED denying Plaintiffs claim for adverse possession.

IT IS FURTHER ORDERED that each party shall pay their own attorney’s fees and costs.

All matters having been resolved, this order constitutes a final appealable order pursuant to Rule 54(c) of the Arizona Rules of Civil Procedure.

Judicial Writing Sample #2

ORDER

Background

On 12/18/2018 Plaintiff filed a Complaint, as well as an Emergency Application for *Ex Parte* Temporary Restraining Order and Temporary Injunction. On 12/20/2018 the Court issued an Order denying the "*Ex Parte*" Application, but gave Plaintiff leave to renew the request "with notice."

On 12/24/2018 Plaintiff filed a second pleading sub-captioned "Plaintiff's Renewed/Second Application for *Ex Parte* Temporary Restraining Order and Temporary Injunction." Following a hearing on 12/27/2018 the Court issued a Temporary Restraining Order (hereinafter "TRO") precluding the foreclosure sale of the property at issue. The Court scheduled a review hearing for 1/24/2019 and required Plaintiff to post a \$1,000.00 bond pursuant to *Rule 65(C)(1)* of the *Arizona Rules of Civil Procedure*.

On 1/23/2019 Plaintiff filed a third pleading sub-captioned "Plaintiff's Hearing Brief Regarding the Hearing for Temporary Injunction."

At the Review Hearing on 1/24/2019 Plaintiff appeared, as did Defendant Jeffrey Postol (hereinafter "Postol"), and Defense Counsel. Defense Counsel had not filed a Notice of Appearance, nor had Defendant filed a written pleading in response to the Complaint or the TRO. The Court affirmed the TRO, required Plaintiff to post an additional \$3,000.00 bond by 3/6/2019, which Plaintiff did, and directed Postol, pursuant to *Rule 65*, to first file an Answer to the Complaint, followed by a Motion to Dissolve or Modify, if he wished to challenge the TRO. There was some discussion between the Court and Counsel as to whether Postol had been properly served a copy of the Complaint, although Defendant acknowledged that he had received a copy of the Complaint.

On 2/16/2019 Plaintiff served Postol with the Summons and Complaint by process server. Three days later, on 2/19/2019 Plaintiff filed an Application and Affidavit for Entry of Default against Postol.

On 3/6/2019 Postol, acting *pro per*, filed a responsive pleading captioned "Defendant's Motion to Dismiss." The Motion to Dismiss requests that the Court dismiss Plaintiff's Complaint while at the same time appears to also be intended to serve as an "Answer" to the Complaint. On the same day, Plaintiff filed a Response in Opposition to Postol's Motion to Dismiss and Motion to Strike.

In addition to its caption as a Motion to Dismiss, the Court interprets Postol's responsive pleading to be, at least in part, a timely "Answer" to the Complaint.

Therefore,

IT IS ORDERED denying Plaintiff's Application for Default Judgment.

Parties to the Action

Plaintiff, who purchased the subject property, has named the following as Defendants: (1) Jeffrey Postol ("Postol"), (2) David/Brenda/Jacob Fedor ("Fedor"), (3) John Bobo/Felice Katz-Bobo LLC ("Bobo LLC"), (4) Mike Fish ("Fish").

According to Plaintiff's Complaint, "the Fedors were the Sellers of the Subject Property to the instant action, when they sold the Property to Plaintiff, said sale consummated on 12/11/2017" (Pg. 4, Lines 90-91).

Postol was the "prior owner of the subject Property and the named 'Beneficiary' in the Notice of Foreclosure Sale..." who "originally sold the Property to the Fedors in 2016" (Pg. 4, Lines 92-94). "When Mr. Postol sold the Property to Defendants the Fedors, the Fedors utilized seller financing therefore, Mr. Postol became the Beneficiary of the Deed of Trust security instrument that was executed by Fedors. In turn, when the Fedors sold the Property to Plaintiff, utilizing the Wrap Around mortgage, Mr. Postol

retained his position as Beneficiary with the legal right to foreclose on the Property if the Loan went into default under the terms of the Deed of Trust” (Pg. 8, Lines 197-202).

Defendant Michael Fish “is a Real Estate Salesperson...currently registered as an agent of the brokerage firm (Bobo LLC)” who acted as the Fedor’s realtor (Pg. 4, Lines 100-102).

Defendant Bobo LLC “is an Arizona real estate brokerage company. One of Bobo LLC’s licensed salespeople/agents, is Co-Defendant, Michael Fish” (Pg. 4, Lines 98-99).

To date, the only Defendant Plaintiff has served is Postol.

Analysis of the Claims Made Against the Defendants

Plaintiff makes the following claims against all Defendant(s): (1) Fraud/Misrepresentation, (2) Malice, Intentional Infliction of Emotional Distress, (4) Negligence/Negligence Per Se “pursuant to R4-29-§§ 1101, 1103” and (5) Declaratory Judgment barring all foreclosure claims pursuant to statutory and common law violations.

Postol has requested the Court dismiss all claims against him for “failure to state a claim upon which relief can be granted.” *Rule 12(b)(6)*.

It is well established that in deciding a motion to dismiss, all material allegations of the complaint should be taken as true. *Lakin Cattle Company v. Engelthaler*, 101 Ariz. 282 (1966).

Count 1 - Fraud/Misrepresentation

A claim for fraud requires proof of nine elements by clear and convincing evidence: (1) a representation; (2) its falsity; (3) its materiality; (4) the speaker’s knowledge of its falsity or ignorance of its truth; (5) the speaker’s intent that it be acted upon by the recipient in the manner reasonably contemplated; (6) the hearer’s ignorance of its falsity; (7) the hearer’s reliance on its truth; (8) the

hearer's right to rely on it; (9) the hearer's consequent and proximate injury. *Comerica Bank v. Mahmoodi*, 224 Ariz. 289 (App. 2010).

Postol is the lender in this matter. Although Plaintiff alleges that misrepresentations were made as to the condition of the property, in particular the solar panels, there are no allegations that Postol made any representations to the Plaintiff. Any representations made as to the condition of the property would have been made either through the Fedors, the realtor, or the realtor's broker, not by the lender.

Count 2 – Malice

While malice may be an element of an actionable claim, malice as a stand-alone claim is not an actionable claim in Arizona.

Count 3 – Intentional Infliction of Emotional Distress.

A plaintiff suing for intentional infliction of emotional distress must prove the defendant caused severe emotional distress by extreme and outrageous conduct committed with the intent to cause emotional distress or with reckless disregard of the near-certainty that such distress would result. *Watkins v. Arpaio*, 239 Ariz. 168 (App. 2016).

Plaintiff's Complaint fails to identify any "extreme and outrageous conduct" committed by Postol that would justify such a cause of action against the lender.

Count 4 - Negligence/Negligence Per Se "pursuant to R4-28-§§ 1101, 1103"

To establish a claim for negligence, a plaintiff must prove four elements: (1) a duty requiring the defendant to conform to a certain standard of care; (2) a breach by the defendant of that standard; (3) a causal connection between the defendant's conduct and the resulting injury; and (4) actual damages. *Gipson v. Kasey*, 214 Ariz. 141 (App. 2007).

Plaintiff has failed to identify any "duty" Postol, as lender, owed to her in disclosing the condition of the property. Plaintiff specifies that the Negligence claim arises "pursuant to R4-28-1101, 1103." ARS 32-2107 authorizes the State Real Estate Department to establish rules and regulations to conform with its statutory duties in regulating the profession and occupation of real estate professionals. Under the Arizona Administrative Code, R4-28-1101 governs a realtor's duty to his/her client. R4-28-1103 similarly governs a Brokers duty in the supervision and control of realtors within their employ. Postol was neither the realtor in this cause of action, nor the Broker.

Count 5 - Declaratory Judgment barring all foreclosure claims pursuant to statutory and common law violations.

Plaintiff has requested, and to date received, a TRO precluding the foreclosure of the property at issue. Plaintiff acknowledges that she is not current on her loan payments (Pg. 20, line 473). Even if Plaintiff's allegation that "Postol's refusal to work out any repayment program with Plaintiff," after Plaintiff failed to comply with the terms of her loan were true, it is not clear to the court that Postol has any duty to "work out any repayment program" beyond the terms of the original agreement (Pg. 21, Line 500). Plaintiff has been living at the residence, in essence, mortgage free for the past several months.

For all of the reasons set forth above, the Court finds that Plaintiff has "fail(ed) to state a claim (against Postol) upon which relief can be granted."

Therefore,

IT IS ORDERED granting Postol's Motion to Dismiss (against Defendant Postol only).

IT IS FURTHER ORDERED dismissing the Temporary Restraining Order previously issued which precluded the foreclosure sale of the property at issue.

Rule 4.1(i) requires, in part: "If a defendant is not served with process within 90 days after the complaint is filed, the court—on motion, or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within specified time."

The Court finds that more than 90 days have passed since the Complaint was filed. Plaintiff has failed to serve Defendants Fedor, Fish and/or Bobo LLC.

IT IS ORDERED that Plaintiff is given 30 days from the date of this order to properly serve the remaining Defendants if Plaintiff wishes to proceed with the Complaint. If service is not complete within 30 days, the matter shall be dismissed without prejudice.

IT IS FURTHER ORDERED directing the Clerk of the Court to hold the bond money posted by the Plaintiff for 30 days. Absent additional pleadings for the Court to rule on, the Court anticipates releasing the bond monies to Plaintiff at that time.

Judicial Writing Sample #3

(Note: In 2018 I attended the Maricopa County Superior Court, Family Law rotational training and received sample templates to assist in drafting orders. The portions of the attached writing sample which came from a template are highlighted in **RED** font).

DECREE OF DISSOLUTION OF MARRIAGE

On August 13, 2018 the court held a Final Evidentiary Hearing. The Court has considered the testimony of the parties and other witnesses, exhibits admitted into evidence, case file and history, applicable rules, statutes and case law, as well as the parties' arguments.

The Court makes the following findings and enters the following orders:

THE COURT FINDS as follows:

- A) At the time the action was commenced at least one of the parties was domiciled in the State of Arizona and had maintained that domicile for 90 days prior to the filing of the Petition for Dissolution of Marriage.
- B) The conciliation provisions of Arizona Revised Statutes have either been met or do not apply.
- C) The parties were married on July 20, 2001. By operation of law, the marital community is deemed to have terminated on February 21, 2018.
- D) The non-covenant marriage is irretrievably broken with no reasonable prospect for reconciliation.
- E) There are no minor children common to the parties and the Petitioner (hereinafter "Wife") is not now pregnant.
- F) To the extent that it has jurisdiction to do so, the court has considered, approved and made provisions for the maintenance of each spouse and the division of property and debts.

IT IS ORDERED dissolving the marriage of the parties and restoring each party to the status of a single person. Wife's last name is restored to Peterson.

Spousal Maintenance

Wife seeks an award of spousal maintenance. The court may award spousal maintenance only if it finds a spouse is eligible under at least one of the four statutory factors in ARS 25-319(A). Elliot v. Elliot, 165 Ariz. 128 (App. 1990). If the court finds one of the factors set forth in ARS 25-319(A), it must then consider each of the factors set forth in ARS 25-319(B) in determining the amount and duration of the award.

The court finds that Wife has failed to establish by a preponderance of the evidence that any of the four statutory factors set forth in ARS 25-319(A) exist.

Wife testified that she has been employed throughout the seventeen-year marriage, holds a Master's Degree in Public Administration which was earned during the course of marriage, and that she is presently employable. Wife also has sufficient property, including property apportioned in this order, to provide for her reasonable needs.

IT IS ORDERED denying Wife's request for spousal maintenance. Neither party is awarded spousal maintenance.

Community Property/Separate Property

The Court shall divide community property equitably, although not necessarily in kind, without any regard to marital misconduct. ARS 25-318(A). An equitable distribution generally requires that community property be divided substantially equally. See Toth v. Toth, 190 Ariz. 218 (1997). The court shall assign each spouse's sole and separate property to that spouse.

In Arizona, the classification of property as community or separate is established at the time of acquisition. Everson v. Everson, 24 Ariz.App. 239 (1975). All property acquired during marriage, except that acquired by gift, devise or descent, is presumed to be community property, unless otherwise demonstrated by clear and convincing evidence. Sommerfield v. Sommerfield, 121 Ariz. 575 (1979).

Wife testified that during the marriage she sold a home that was her separate property. She took the proceeds from the sale of that home and used them to help purchase land and build a home with Respondent (hereinafter "Husband"). Husband also testified that he used separate funds to help in the building of the home. Both parties acknowledge that these monies were intended to be used for the benefit of the community. The court finds that these separate property contributions were gifted to the community.

Two appraisals were conducted on the marital residence in Nutrioso. Husband's appraisal valued the home at \$210,000. The experience of Husband's appraiser is unknown to the court. Wife's appraisal valued the home at \$265,000. Wife's appraiser, who has substantial experience appraising homes in the area, testified at trial that he did not physically set foot on the property, nor did he go inside of the home, but observed the property from the street. He also testified that the appraised value could be different had he physically walked the property and viewed the interior of the home. The court finds the value of the marital residence to be \$237,500, with each party having a one-half interest in that value (\$118,750).

In 2010, Husband's mother passed away resulting in Husband inheriting a home (hereinafter "White Mountain Lakes home"). Husband added Wife to the title of the home. Sometime thereafter the parties sold the home and agreed to carry a note for the purchaser. The purchaser pays \$706 each month towards the \$98,000 note. Each party receives directly one-half of the monthly payment (\$353).

Husband argues that White Mountain Lakes home, and subsequent note on the home, are his separate property because he received the home by inheritance. However, a spouse may convey their separate property to the community if 1) there is a written instrument indicating the same and 2) there is conduct supporting the intent of the written instrument. Bender v. Bender, 123 Ariz. 90, 93 (App. 1979), relying on In re Sims Estate, 13 Ariz.App. 215 (1970).

Both parties agree there was a written instrument that added Wife to the title of the home (Exhibit #24). The parties treated the home as community property, including arranging for the purchaser's monthly payment to be divided equally among the parties with each party's share being paid directly to them. This type of conduct supports the position that Husband intended the home to be a gift to the community. Although the White Mountain Lakes home was acquired as Husband's separate property, the court finds by clear and convincing evidence that the home was gifted to the community. The value of the note on the home is \$98,000, with each party having a one-half interest in that value (\$49,000).

Both parties used various 401(k) monies during marriage for such things as Wife's education, education expenses for Husband's daughter, and gifts to Husband's daughter and grandchildren. Neither party is entitled to be reimbursed for any of these expenditures.

Wife has a one-half interest in any SRP retirement account/pension that Husband earned during the time of marriage. Husband has a one-half interest in Wife's ASRS retirement that was cashed out, the entirety of which was earned during marriage. Wife's ASRS retirement is \$67,328.29, with Husband's one-half interest being \$33,664.14 (this amount is currently in Husband's attorney's IOLTA account).

THE COURT FINDS the following to be Wife's separate property:

- Navajo Rugs
- Computer (gift from a friend)

The court finds the following to be Husband's separate property:

- 2005 Bighorn Trailer (gift from inheritance)
- Homemade car trailer (built before marriage)

- 1948 A/C tractor (gift from grandfather)
- 1980 F-150 pickup truck (gift from father)
- Miller Gold Star welder (acquired before marriage)
- Welding power hand tools (only those acquired before marriage)
- Guns/Gun Safe (only those guns gifted from father or acquired before marriage)
- Pack Mule (gift from father)
- Circle Y Mule Saddle (gift from father)
- Coin collection (inheritance from mother)
- Rings previously in safe (acquired before marriage and/or gift from mother)

THE COURT FINDS the following division of community property to be fair and equitable:

IT IS ORDERED awarding Wife as her sole and separate property, subject to any liens or encumbrances on the property, the following:

- Residence/Note on the White Mountain Lakes home (1777 Bemus);
- All ASRS withdrawn retirement funds totaling \$67,328.29 (minus those obligations set forth below);
- 1996 Holiday Rambler Motorhome;
- 2005 Honda CRV;
- 2005 SEADOO w/trailer;
- 1985 Miramar Boat;
- 1973 Case CK Backhoe;
- 1972 Horse W-W trailer;
- Honda Suitcase Generator;
- Honda Weedeater;

- Trailer Mower;
- Household furniture already taken from home;
- Vacuum;
- ½ of the welding power hand tools acquired after marriage;
- ½ of the guns acquired during marriage that were not a gift from Husband's father;
- ½ of the artwork in the home;
- A percentage of Husband's SRP pension under the following formula: $\frac{1}{2} \times$ (July 20, 2001 thru February 21, 2018 as numerator/total years employed and contributing to the retirement system as the denominator);
- All other personal property currently in her possession.

IT IS ORDERED awarding Husband as his sole and separate property, subject to any liens or encumbrances on the property, the following:

- Residence located at 40 C.R. 2021 in Nutrioso;
- 2009 Honda Civic;
- 2009 Mustang Horse Trailer;
- 1999 Dodge 2500;
- 1994 Polaris 4-wheeler;
- Honda Generator;
- Aluminum fishing boat;
- 1974 Big D Welder;
- Horses, saddles and tack;
- ½ of the welding power hand tools acquired after marriage;
- ½ of the guns acquired during marriage that were not a gift from Husband's father;

- ½ of the artwork in the home;
- All other personal property currently in his possession.

IT IS ORDERED directing the parties to have prepared any necessary Qualified Domestic Relations Order (“QDRO”) to effectuate the division of the SRP pension. The parties shall share equally in any costs associated with the same.

Debts/Reimbursements

THE COURT FINDS that the following community debts were identified:

- Chase Credit Card that Wife used for attorney’s fees and which had a previous community debt balance;
- FIB for a Horse Trailer;
- Chase Credit Card that Husband used for attorney’s fees.

IT IS ORDERED that in fairly and equitably allocating the community assets and the community debts, Wife shall be solely responsible for ½ of the Chase Credit Card balance from the preexisting community debt (excluding her attorney’s fees). Wife’s ½ share is to be paid from ASRS funds currently held in Husband’s attorney’s IOLTA account. In addition, Wife’s attorney’s fees charged to the Chase Credit Card shall be paid from ASRS funds currently held in Husband’s attorney’s IOLTA account.

IT IS ORDERED that in fairly and equitably allocating the community assets and the community debts, Husband shall be solely responsible for the remaining ½ Chase Credit Card balance from the preexisting community debt (excluding Wife’s attorney’s fees). Husband shall also be solely responsible for the Horse Trailer debt through FIB, as well as the Chase Credit Card used for his attorney’s fees.

IT IS FURTHER ORDERED that each party shall be solely responsible for any credit card or debt in their name incurred after service of the Petition. Any community debts that were not identified at the

time of trial shall be divided equally between the parties. Each party shall ensure that the other party's name is removed from all credit accounts assigned to them in this Decree by October 15, 2018.

Wife failed to comply with the agreement of the parties, and subsequent order of the court issued April 11, 2018, intentionally causing damage to the Honda Civic. Repairs to the vehicle from Wife's conduct totaled \$2,250.

IT IS ORDERED awarding Husband \$2,250 as reimbursement for Wife's damage to the Honda Civic. Said amount to be paid directly from the ASRS funds currently held in Husband's attorney's IOLTA account.

Husband's Motion for Contempt/Attorney's Fees

ARS 25-324 gives the court discretion to award reasonable attorney's fees and costs after considering the financial resources of a party, as well as the reasonableness of petitions filed and positions taken. More specifically, a court may award attorney's fees if a "petition was filed for an improper purpose, such as to harass the other party..." ARS 25-324(B)(3).

The court finds Wife's Motion for Contempt against husband to be improper and intended to harass.

Wife, under oath, has made multiple misleading statements to the court. As an example, Wife testified that Husband took items from the safe and hid them. Later, it was discovered that it was Wife who removed all items from the safe. Wife admitted this only after the friend, who at Wife's request was holding some of the items from the safe, testified that Wife gave her the items to hold (some items from the safe still remain missing as of the date of this order). Wife also testified she did not cause damage to the Honda Civic, when in fact she did. One of Wife's own witnesses testified that Wife told her directly that she took a baseball bat to the back window of the Honda Civic.

Wife has also failed to comply with court orders. As an example, Wife refused to remove a lock from the gate to the Nutrioso property for several weeks after being ordered by the court to do so. Wife also failed to deliver the Honda Civic to Husband as she agreed to, and as the court ordered. Husband accrued attorney's fees and costs as a direct result of Wife's conduct and improper filing.

IT IS ORDERED finding Wife in contempt of court for failure to comply with court orders and for intentionally misleading the court.

IT IS FURTHER ORDERED awarding reasonable attorney's fees of \$5,000.00 to Husband. Said amount shall be paid from ASRS funds currently held in Husband's attorney's IOLTA account.

Order of Protection

Wife initially obtained an *ex parte* Order of Protection through the Round Valley Justice Court. Thereafter Wife filed the Petition for Dissolution in the Superior Court. On March 14, 2018 the Superior Court held a hearing at Husband's request to determine whether the Order of Protection would remain in place. At that hearing the court affirmed the Justice Court's Order, with some modification.

On April 11, 2018 the court held a hearing to address temporary orders and contempt allegations from both parties. The hearing could not be completed in the time allotted and concluded at a subsequent hearing on May 3, 2018. The allegations of contempt were intertwined with the allegations involved in the Order of Protection. At the May 3rd hearing, the court *sua sponte* dismissed the Order of Protection. Wife argues that the court lacked the authority to dismiss the Order of Protection *sua sponte* and urges the court to reinstate the Order of Protection.

"[W]hen a cause is pending before the court, the court has inherent power to modify or vacate an order previously made during the pendency of the cause. Anonymous v. Superior Court In and For Pima County, 10 Ariz.App. 243, 247 (1969), relying on Campbell v. Thurman, 96 Ariz. 212 (1964).¹

Because Wife, under oath, misled the court at the hearings on April 11th and May 3rd, the court no longer found her prior testimony to be credible. Many of the issues Wife testified to at these hearings were issues connected to the Order of Protection. As a result, the court reversed its March 14th order and dismissed the Order of Protection.

IT IS ORDERED denying Wife's request to reinstate the Order of Protection.

IT IS FURTHER ORDRED, except as ordered above, each party is to pay their own attorney's fees and costs.

The court having ruled on all matters, this Order constitutes a final appealable order pursuant to Rule 78(c) of the Arizona Rules of Family Law Procedure.

¹ If the court were to accept the argument that it lost the authority to make rulings on an Order of Protection once it was issued and a contested hearing was held, then by that same reasoning the court would lack the authority to grant a Plaintiff's request to dismiss an Order of Protection should he/she determine the order was no longer needed. Because the court clearly retains the authority to dismiss an Order of Protection in a situation like that, it follows that the court must have inherent power to modify (or vacate) the Order of Protection.